

TITLE 329 SOLID WASTE MANAGEMENT BOARD

LSA Document #05-167 (SWMB)

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On July 18, 2006, the solid waste management board (board) conducted the first public hearing/board meeting concerning the development of amendments to the rule at 329 IAC 10-20 and 329 IAC 10-39 concerning solid waste land disposal facilities, financial responsibility and annual review and annual survey results. This hearing was continued to September 19, 2006. Comments were made by the following parties:

Dan Weiss, Director of State Energy and Environmental Public Affairs, Duke Energy Indiana
(DEI)
Brian Hart, Regional Services Corporation
(RSI)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: Duke Energy concurs with IDEM that aerial surveys as outlined in 329 IAC 10-20-24 are an important part of the management of restricted waste landfills. We also concur that they need to be completed annually. What we are asking for today is that IDEM consider more flexibility on when the aerial surveys must be completed. Duke Energy, and many electric power companies, does annual aerial surveys of their coal and limestone piles. These are normally conducted in summer months (July and August) to coincide with other state government inventory and fiscal reporting requirement due in the fall. These surveys must be done as close to the time when the fiscal reports are due and there is no flexibility in scheduling and filing these governmental reports. The major cost of conducting these flyover surveys is getting the planes up in the air to collect the necessary data for developing the survey. A company can experience significant cost savings if the data for multiple surveys can be collected on the same flight. Requiring a facility to conduct a separate flyover to meet a restrictive schedule would add an additional cost ranging from \$10,000 to \$17,000 per year depending on the size of each landfill. This cost will be compounded since there are only a handful of aerial companies who offer this service, and having overly restrictive schedules will drive up the cost to complete these surveys. Aerial surveys are also highly weather dependent in the winter months. Only allowing a fixed three month window of January 1 to March 31 to conduct all the surveys in the state is unnecessarily burdensome. We are requesting that IDEM not restrict the operators of landfills into specific dates of when the aerial surveys of the landfills must be completed. Allowing our company and other utilities for example, to conduct these surveys at other times of the year will allow for more accurate reporting. We recommend at a minimum that IDEM should consider language that allows for the agency to approve alternative reporting schedules for aerial surveys. (DEI)

Response: Flyovers must be conducted when there is less foliage on the trees so visibility of the site is maximized. However, the department did propose extending the aerial survey from December 1st through March 31st. It should be noted that the aerial survey is only required for municipal solid waste landfills and doesn't apply to restricted waste landfills.

Comment: Most utilities use a financial test for complying with financial assurance requirements. These reports are conducted and are required to be submitted on the anniversary dates of the submittal done the year before. Allowing utilities to report on a schedule that is based on existing fiscal reporting requirements make the most sense. It should also be noticed that some restricted waste permits are written so that aerial surveys must be conducted in the summer or fall months. Thus a conflict between our permit requirements and this proposed rule amendment is likely to be created. We recommend at a minimum that IDEM should consider language that allows for the agency to approve alternative reporting schedules for financial assurance reports. (DEI)

Response: The annual survey requirement in this rule is only applicable to municipal solid waste landfills. This rule does not address this issue for restricted waste sites.

Comment: Regarding the annual survey date, I sat in the workgroup meeting and talked about that time line

being switched from the October-November-December to January-February-March, and at that time we didn't have any comments. But since then, having talked to some of our clients and the fact that for ten years we've been gathering that data close to an anniversary date, mid-December for several of our clients, that that time line works well for them. (RSI)

Response: The department did propose to extend the aerial survey from December 1st through March 31st of the next year.

Comment: Some of our sites we do it with actual ground surveys and not with aerial surveys, at least updating the active areas. For smaller clients that just works more because it's more feasible. I guess what we're requesting is that the Board consider maybe widening that survey date, maybe going back and picking up December, for the purpose of the clients who have been surveying in December for ten years plus now, and the fact that that then gives them data that's available at the first of the year, rather than waiting to survey it the first of the year. For planning purposes, it just gives them that information a little bit earlier. They're more accustomed to getting it then. (RSI)

Response: The department did propose to extend the aerial survey from December 1st through March 31st of the next year.

Comment: A second comment I want to make, and I'm confident, that after talking to Anup, that this is the way this is being interpreted, but just on the formula that's being developed for the post-closure financial assurance, just that we make sure we consider in that formula both Subtitle D and non-Subtitle D areas. I'm confident that that is going to head in that direction, but I just wanted to make that comment. (RSI)

Response: IDEM agrees. The formula applies to both lined and unlined landfills, as well as, municipal solid waste landfills, non-municipal solid waste landfills and restricted waste sites.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On September 19, 2006, the solid waste management board continued the first public hearing/board meeting concerning the development of amendments to 329 IAC 10 concerning amendments to 329 IAC 10-20-24, 329 IAC 10-39-2 and 329 IAC 10-39-3 concerning financial responsibility for solid waste land disposal facilities. IDEM received comments from the following parties:

Bill Paraskevas, National Solid Waste Management Association

(NSWMA)

The following is the comment received at the continued hearing and IDEM's responses thereto:

Comment: We have one suggested change to the proposed rule, at 329 IAC 10-39-2(a). The way the language is currently written, it only references the total closure funding mechanism. It does not reference the incremental funding mechanism, and we're suggesting that in that phrase we add the words "unless as allowed by subsection (b)(3)(B)," which does reference the incremental closure section, and this is -- also mirrors changes -- or language that's in the Post-Closure Rule at 10 39-3. (NSWMA)

Response: This change was already made in the draft rule as presented for preliminary adoption.